

IN THE MATTER OF	:	BEFORE THE
MOHAMED Z. RAHAMAN	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-005V

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DECISION AND ORDER

On April 7, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Mohamed Z. Rahaman for a variance to reduce the 7.5-foot side setback to 4 feet and the 30-foot rear setback to 29 feet for an addition in an R-SC (Residential: Single Cluster) zoning district, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The property owner Mohamed Rahaman testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is located in the 6th Election District on the west side of Kings Grant Road approximately 100 feet south of Knights Court. It is identified as Tax Map 47, Grid 15, Parcel 1005, Lot 58 and is also known as 9347 Kings Grant Road (the "Property").

2. The 6,144-square foot triangular Property is part of the Kings Wood subdivision. It is improved by a 40' x 40' single-family detached dwelling fronting on Kings Grant Road. A two-car parking pad and driveway are situated in the northeastern section of the front lawn. A small shed is situated near the northwest side lot line.

3. Vicinal properties. Adjacent properties are zoned R-SC and are improved with single-family dwellings.

4. The Petitioner is proposing to construct a 10-foot deep, 12-foot wide second-story sunroom addition to the rear of the dwelling closest to the northwesterly side lot line. Access to the sunroom would be gained from the upper-level dining room's sliding doors. Petitioner's photographic Exhibit 1 depicts a nearby dwelling which has a rear upper story sunroom similar to the one he wishes to build. As constructed the 10-foot section would encroach 3.5 feet into the 7.5-foot side setback and one foot into the rear setback.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are

made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I conclude the requested variance complies with Section 130.B.2.a and may therefore be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

2. With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thus.

In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.

North v. St. Mary's County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Property is smaller than neighboring properties along Kings Grant Road and its triangular shape limits the location of any rear addition to the dwelling. I therefore conclude the Property's triangular shape and resulting narrowness constitute unique physical conditions. These conditions result in practical difficulties in complying strictly with the setback requirements of the Zoning Regulations for properties within the R-SC zoning district, in accordance with Section 130.B.2.a(1).

3. The granting of the variance will enable the Petitioner to construct a reasonably sized sunroom addition, which is typically found in the zone. The nature and intensity of the use will not be changed. I therefore conclude the variance, if granted, will not alter the character of the neighborhood in which the Property is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare as required by Section 130.B.2.a(2).

4. The practical difficulty in complying strictly with the setback regulations arises from the Property's unique shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

5. The variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **21st day of April 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Mohamed Z. Rahaman for a variance to reduce the 7.5-foot setback to 4 feet and the 30-foot rear setback to 29 feet for a second-story sunroom in an R-SC (Residential: Single Cluster) zoning district is **GRANTED**.

Provided, however, that:

1. The variance will apply only to the uses and structures as described in the petition submitted, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 4/22/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.